



Federal Communications Commission
Washington, D.C. 20554

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DA 14-616
In Reply Refer to:
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Re: KBRs(FM), Belle Rose, Louisiana
Facility ID No: 190402
File No: BNPH-20120515ABA
Petition for Reconsideration

Dear Counsel:

This letter addresses the January 7, 2013, petition for reconsideration (the "Petition"), submitted by Guaranty Broadcasting Company of Baton Rouge, LLC¹ ("Guaranty") regarding of the grant of the above-referenced new station application (the "Application") of Alex Media Inc. ("Alex Media"), at Belle Rose, Louisiana.² Alex Media submitted an Opposition to Petition for Reconsideration (the "Opposition").³ For the reasons discussed below, we dismiss the Petition.

Background. Alex Media was the winning bidder in Auction 93 for Channel 295C3 at Franklin, Louisiana. To implement its winning bid, the Application requested a channel downgrade and change of community of license, from Channel 295C3 at Franklin to Channel 295A at Belle Rose, Louisiana, as the community's first local service.

Guaranty submitted an Informal Objection⁴ to the Application. Although Guaranty conceded that grant of the Application would not allow the new station to provide service to the majority of the Baton Rouge Urbanized Area ("UA"), it argued that the station could later relocate its transmitter site to an area from which a majority of the UA could be served. Guaranty contended that Alex Media's true intention

¹ Guaranty is the licensee of radio stations WDGL(FM) and WTGE(FM), Baton Rouge, Louisiana; WBRP(FM), Baker, Louisiana; KYPY(FM), Donaldsonville, Louisiana; and WNXX(FM), Jackson, Louisiana. In its initial filing in this proceeding, the Informal Objection, Guaranty stated that all of these stations serve the Baton Rouge radio market, and that they would be competitors to the new proposed Belle Rose station. Guaranty further stated that these stations would be affected adversely by grant of the Application.

² See Letter to Evan Carb, Esq., and Aaron P. Shainis, Esq., from Nazifa Sawez (Dec. 4, 2012) ("*Letter Decision*").

³ The Opposition was filed on January 18, 2013.

⁴ Comments and Opposition (Aug. 12, 2012) ("*Informal Objection*").

is to serve the Baton Rouge UA, and that the Application is inconsistent with the policy goals of *Rural Radio*.⁵ Guaranty further criticized the Application for failure to demonstrate that Belle Rose is independent from the Baton Rouge UA or that Belle Rose satisfies any of the *Tuck* factors.⁶

On December 4, 2012, the staff denied the Informal Objection and granted the Application under Priority 3, finding that a first local service to Belle Rose is preferred over a potential second local service at Franklin.⁷ The staff noted that the urbanized area service presumption (“UASP”) would not apply to the Application, and there were no rule-compliant transmitter sites available from which the new FM station could be modified to cover fifty percent or more of the Baton Rouge UA.⁸

In its Petition, Guaranty reiterates its claim that the Application is an attempt to “manipulate the Commission’s processes” in order to serve “the more lucrative market of Baton Rouge.” Guaranty again states that the station should not be considered a first local service at Belle Rose,⁹ arguing that Alex Media could relocate its transmitter site to serve a majority of the Baton Rouge UA.¹⁰ In the alternative, Guaranty argues that, even if the station could not cover fifty percent of the Baton Rouge UA, “the proposal nonetheless should be treated as one to serve the urbanized area rather than the specified community of license,” if the majority of the proposed principal community contour would be within the urbanized area.¹¹ Guaranty urges us to reconsider the *Letter Decision* and rescind our grant of the Application.

In its Opposition, Alex Media contends that the Petition should be dismissed without consideration pursuant to Section 1.106(p),¹² because it relies on arguments that were fully considered and rejected in the *Letter Decision*. Alex Media points out, as it did in the initial proceedings, that Guaranty does not refute the engineering analysis of Alex Media and the independent evaluation by Commission staff, both of which showed that there is no available tower from which the new station could cover fifty percent or more of the Baton Rouge UA, while maintaining the required city-grade coverage at Belle Rose. Finally, Alex Media notes that the Petition fails to demonstrate error in our conclusion that the Application satisfies Priority 3 of the allotment priorities.

⁵ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556 (2011), and Second Order on Reconsideration, 27 FCC Rcd 12829 (2012) (“*Rural Radio*”).

⁶ *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1978) (“*Tuck*”) (establishing eight factors to determine whether a suburban community is independent of a nearby central city).

⁷ *Letter Decision* at 3. See also *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁸ Under the UASP adopted by the Commission in *Rural Radio*, a facility that would or could cover 50 percent or more of an UA is presumed to serve the UA, rather than the named community of license. *Rural Radio*, Second Report and Order, 26 FCC Rcd at 2572, ¶ 30.

⁹ See Informal Objection at 4 and Petition at 4.

¹⁰ See Informal Objection at 3-4 and 6, and Petition at 3-4 and 6.

¹¹ See Informal Objection at 5 and Petition at 5, both citing *Rural Radio*, 26 FCC Rcd at 2572, n.78.

¹² See 47 C.F.R. § 1.106(p).

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.¹³ Guaranty has not met this burden. Guaranty's Petition merely repeats arguments raised in its Informal Objection. In fact, the text of the Reconsideration Petition is essentially identical to the text of Guaranty's Informal Objection.¹⁴

We will not further consider Guaranty's arguments that the UASP should apply to the Application and that Alex Media should be required to submit a *Tuck showing*. It is settled Commission policy that petitions for reconsideration are not to be used for the mere re-argument of points previously advanced and rejected.¹⁵ Accordingly, we decline to consider these arguments again. With respect to Guaranty's claim that the Application should be deemed a proposal to serve the Baton Rouge UA because the majority of the principal community contour would cover the urbanized area, we hereby clarify our holding in one respect. The Commission has stated that it would consider such challenges to an application or allotment under one specific set of circumstances, *i.e.*, where "the majority of a proposed station's contour ... cover[s] part of an urbanized area without ... triggering the ... presumption."¹⁶ We disagree with Guaranty's claim. Our independent engineering analysis shows that only 2.5 percent of the principal community signal is within the Baton Rouge UA. Guaranty presented neither evidence nor adequate and specific factual allegations regarding the circumstances specified by the Commission.¹⁷ We therefore will not consider this argument further.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Guaranty Broadcasting Company of Baton Rouge, LLC IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ See 47 C.F.R. sec. 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. V. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁴ Compare Petition at 2-7 with Informal Objection at 2-7.

¹⁵ See *Regents of the University of California*, Order, 17 FCC Rcd 12891, 12892 (WTB 2002) ("*Regents*") (citing *Mandeville Broadcasting Corp. and Infinity Broadcasting of Los Angeles*, Order, 3 FCC Rcd 1667 (1988)); and *M&M Communications, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 5100 (1987).

¹⁶ See *Rural Radio*, 26 FCC Rcd at 2572, n.78.

¹⁷ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (holding that informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).